

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; and JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

[PROPOSED] ORDER GRANTING
PLAINTIFF BUNGIE, INC.'S
OMNIBUS MOTION *IN LIMINE*

THIS MATTER came before the Court for hearing on Plaintiff Bungie, Inc.'s ("Bungie") Omnibus Motion *In Limine*. Now, having reviewed the parties' briefing, declarations, and exhibits attached thereto, it is hereby ORDERED as follows:

A. Bungie's Motion *In Limine* No. 1: That certain findings from the arbitration award are to be given preclusive effect and that the jury is to be instructed as to their truth, is GRANTED. The jury will be instructed that the following findings from the arbitration award are true:

1. Bungie owns copyrights in *Destiny 2* and *Destiny 2: Beyond Light*.
2. James May reverse engineered *Destiny 2* and *Destiny 2: Beyond Light* in order to help develop the Cheat Software that Phoenix Digital Group, LLC sold on its website.

[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 1

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3. James May's reverse engineering of *Destiny 2* and development of the Cheat Software were done in concert with and for the benefit of Defendants Phoenix Digital Group, LLC, David Schaefer, Jordan Green, and Jeffrey Conway.
4. To operate, the Cheat Software creates unauthorized copies of the *Destiny 2* and *Destiny 2: Beyond Light* code and unauthorized derivative works based on *Destiny 2* and *Destiny 2: Beyond Light*.
5. The Cheat Software was designed to circumvent the protections in place in *Destiny 2* and *Destiny 2: Beyond Light* and the Cheat Software loader was designed to circumvent protections by injecting code into the *Destiny 2* and *Destiny 2: Beyond Light* program without detection in violation of 17 U.S.C. § 1201(b).
6. Defendants willfully violated the Digital Millennium Copyright Act (17 U.S.C. § 1201) through their development and sale of the Cheat Software.
7. Defendants sold at least 1,316 copies of the Cheat Software.
8. In concert with and for the benefit of Defendants, James May breached Bungie's Limited Software License Agreement multiple times by reverse engineering of *Destiny 2* and *Destiny 2: Beyond Light*, which the Limited Software License Agreement expressly prohibits.
9. Phoenix Digital Group, LLC, David Schaefer, Jordan Green, and Jeffrey Conway lied in response to Bungie's November 4, 2020 cease and desist letter, failed to preserve many of the financial records concerning the sales of the Cheat Software, and either deleted records concerning the Aimjunkies website or failed to stop the automatic deletion of those records. None of this spoliation of evidence was done innocently.

1 B. Bungie's Motion *In Limine* No. 2: That Defendants are precluded from offering
2 certain witnesses, evidence, or testimony during trial is GRANTED. Defendants are
3 precluded from offering the following at trial:

- 4 1. Calling Bungie's General Counsel, Don McGowan, as a witness
- 5 2. Any evidence or testimony related to Defendants' withdrawn expert Scott
6 Kraemer;
- 7 3. Any argument or affirmative defense that Bungie's claims are barred by the
8 doctrine of unclean hands due to Defendants' claim that Bungie breached
9 Defendant Phoenix Digital Group, LLC's Terms of Service; or
- 10 4. How the Cheat Software or loader operate on a programming level.

11 C. Bungie's Motion *In Limine* No. 3: To maintain the highly confidential designation of
12 the identity of the witness identified in these proceedings as John Doe, is GRANTED.

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14 **IT IS SO ORDERED**

15
16 DATED this _____ day of _____, 2023.

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19 _____
20 Honorable Thomas S. Zilly
21 UNITED STATES DISTRICT JUDGE
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[PROPOSED] ORDER
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Presented by:

/s/ DRAFT

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